IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7260 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

BABUBHAI S BAMBHALIY

Versus

EXECUTIVE ENGINEER G.E.B.

Appearance:

1. Special Civil Application No. 7260 of 2001

MR PH PATHAK for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/04/2002

ORAL JUDGEMENT

#. Heard Mr.P.H.Pathak, learned advocate appearing on behalf of the petitioner workman.

#. The petitioner has challenged the award passed by the Labour Court, Amreli in Reference No.72 / 1993 [Old

No.453 / 1987] dated 4th October, 1999. The labour Court has rejected the Reference raised by the petitioner. Learned advocate Mr.P.H.Pathak has pointed out that initially, the petitioner was working in the Society which was taken over by the Gujarat Electricity Board along with staff. It is further pointed out that the petitioner was also absorbed by the G.E.Board and thereafter, he worked with the Board and his services was illegally terminated in violation of Section 25-F of the I.D.Act, 1947. Learned advocate Mr.Pathak has submitted that witness who was examined on behalf of the respondent Board, had also admitted that initially there was Veraval Division, wherein, necessary record were lying at Veraval and now the new division is at Una and therefore, the record was not available and not produced by the respondent Board. Therefore, adverse inference must have to be drawn by the labour court. Learned advocate Mr.Pathak has submitted that at pg.20 internal pg.14 wherefrom it reflects that it was considered by the respondent Board that the workman was temporary and appointed on ad hoc basis and he was working as Helper, even though this aspect has been ignored by the labour court.

#. I have considered submissions of the learned advocate Mr.Pathak. It has come on record from the clear evidence produced by the respondent Board that when the Society was taken over, at that time, the petitioner was not taken and accordingly not absorbed by the respondent Board. However, in the evidence of the petitioner itself, the workman has admitted that he is not having any base or documents that he had worked during the period from 4th June, 1981 to 1st April, 1984 and he is also not having any evidence to show that whether he has worked with the Board or not. Therefore, considering all these aspects of the matter, the labour court has come to the conclusion that the respondent Board has not absorbed the petitioner workman when society was taken over by the respondent Board.

#. This Court has perused the entire award. There is nothing on record to justify the case of the petitioner that he was appointed by the Board having been absorbed from the Society. Before the labour court, the petitioner has not produced satisfactory evidence to show that for how many days he had worked with the Board. In absence of such evidence, ultimately, the labour court has come to the conclusion that the petitioner has failed to prove his case and the respondent Board has proved the facts on the basis of the documents as per the agreement between Kodinar Electricity Society and the Gujarat

Electricity Board, wherein in all names of 171 employees produced by the respondent Board but the name of the petitioner was not found therein. Therefore, it seems that the labour court has considered the entire evidence which was on record and after appreciating the oral evidence led by both the parties, according to my opinion, the labour court has rightly come to the conclusion. Therefore, no error has been committed by the labour court while passing such award. There seems no jurisdictional error, nor any procedural irregularity committed by the labour court, which calls for any interference of this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. In view of above discussion, there is no substance in this petition and the same is rejected at the threshold accordingly. No order as to costs.

Date : 5-4-2002 [H.K.Rathod, J.]

#kailash#